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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,707	07/10/2003	Refaat S. Fanous	2682/102	1553
2101	7590	08/11/2005	EXAMINER	
BROMBERG & SUNSTEIN LLP			ARAJ, MICHAEL J	
125 SUMMER STREET			ART UNIT	
BOSTON, MA 02110-1618			PAPER NUMBER	

3732

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,707

Applicant(s)

FANOUS, REFAAT S.

Examiner

Michael J. Araj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 10, 13, 15, 16, 17, 19, 21, 22, 25, 26, 28-30, 35, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 11, 12, 14, 16, 18, 20, 23, 24, 27, 31-34, 36, 37 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/10/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Fig. 3, 3A, 10 and 17 in the reply filed on July 11, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

It is acknowledged that applicant believes claims 1-3, 9, 11, 12, 14, 16, 18, 20, 23, 24, 27, 31-34, 36, 37 and 40-43 read on the elected species. The examiner agrees.

Claims 4-8, 10, 13, 15, 16, 17, 19, 21, 22, 25, 26, 28-30, 35, 38 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2005.

### ***Drawing Objections***

Applicant appears to have overlooked a feature on the drawing filed on September 3, 2003. Figure 10 appears to be missing the curved end as shown in Figure 10 of the drawings filed on July 10, 2003. Appropriate attention to this matter is requested.

The drawings are objected to because Figure 10 submitted on July 10, 2003 does not appear to show the same features as Figure 10 submitted on September 3, 2003. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in

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reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11, 14, 16, 18, 23, 31, 33 and 37 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by Santilli et al. (U.S. Patent No. 6,099,468).

Santilli et al. discloses a retraction device (10) comprising a frame (see Figure 1 below) hinged (28) on a handle (30), where the frame includes a track (50) and a least one or more anterior retractors with a curved blade (78, 80, 82), attached to the retractor-handle (84) that is attached to the frame with a jig (54), where the retractor (10) is slidably mounted on the track (50) by a jig that does not contact the patient; a ratchet mechanism (26); and a support element (90) attached to the handle for retaining the device in a position .

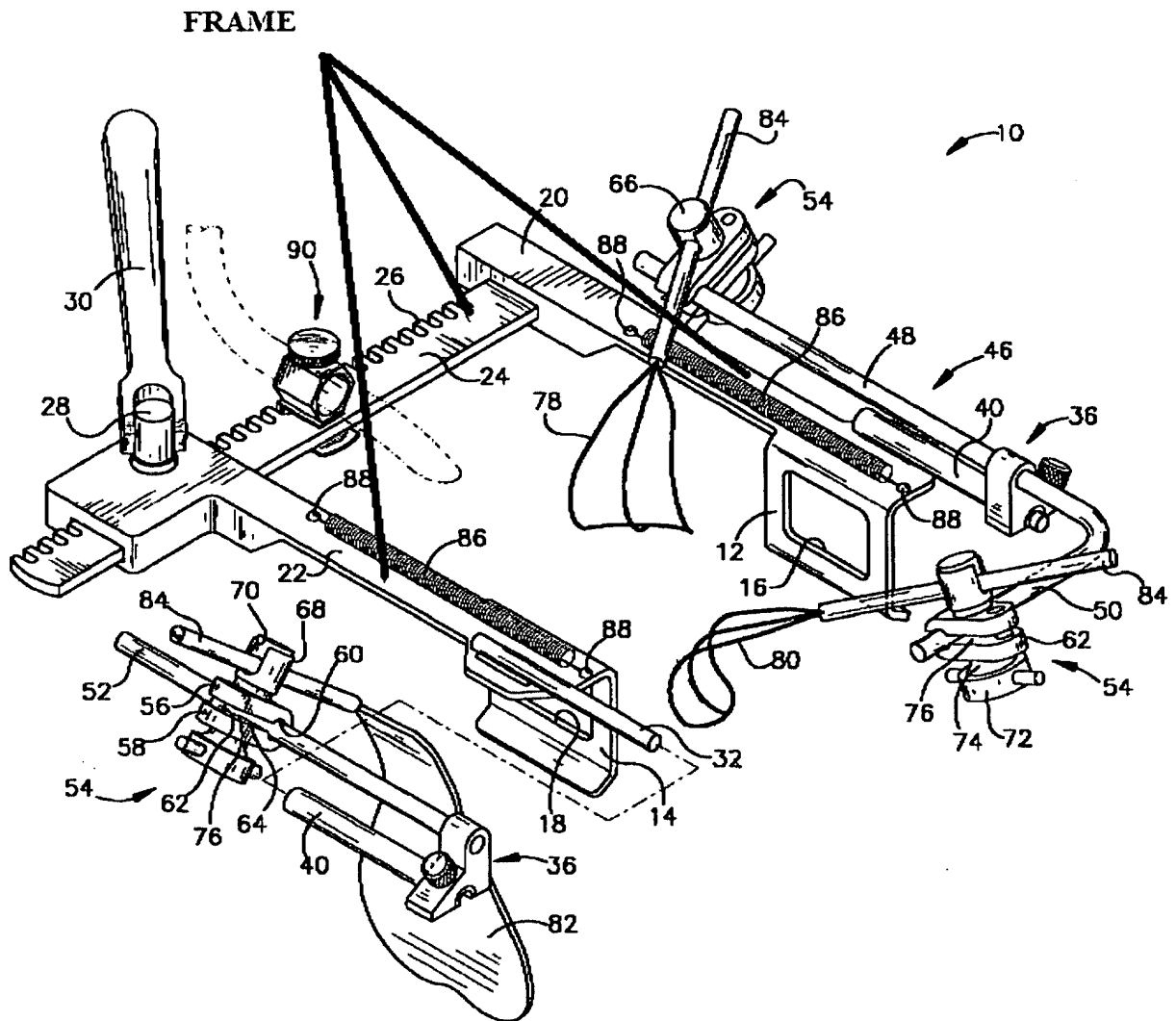


Figure 1

Claims 1, 3, 9, 11, 14, 16, 18, 20, 23, 31-34 and 40 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by Karlin et al. (U.S. Patent No. 3,509,873).

Karlin et al. discloses a retraction device (1) comprising a frame (see Figure 2 below) hinged (18) on a handle (25), where the frame includes a track (see Figure 2) and a least one or more anterior retractors with a curved blade (see Figure 2), attached

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to the retractor-handle (see Figure 2) that is attached to the frame with a jig (12), where the retractor is slidably mounted on the track by a jig that does not contact the patient; the track includes a groove/slot (14) for slidably mounting the jig (12) to the track; a support element (9) attached to the handle (25); a retractor-handle that has a groove along a portion of a length of it, where the groove (14) has a differential width (30); and the retractor is configured with a curved blade forming a groove capable of supporting another blade.

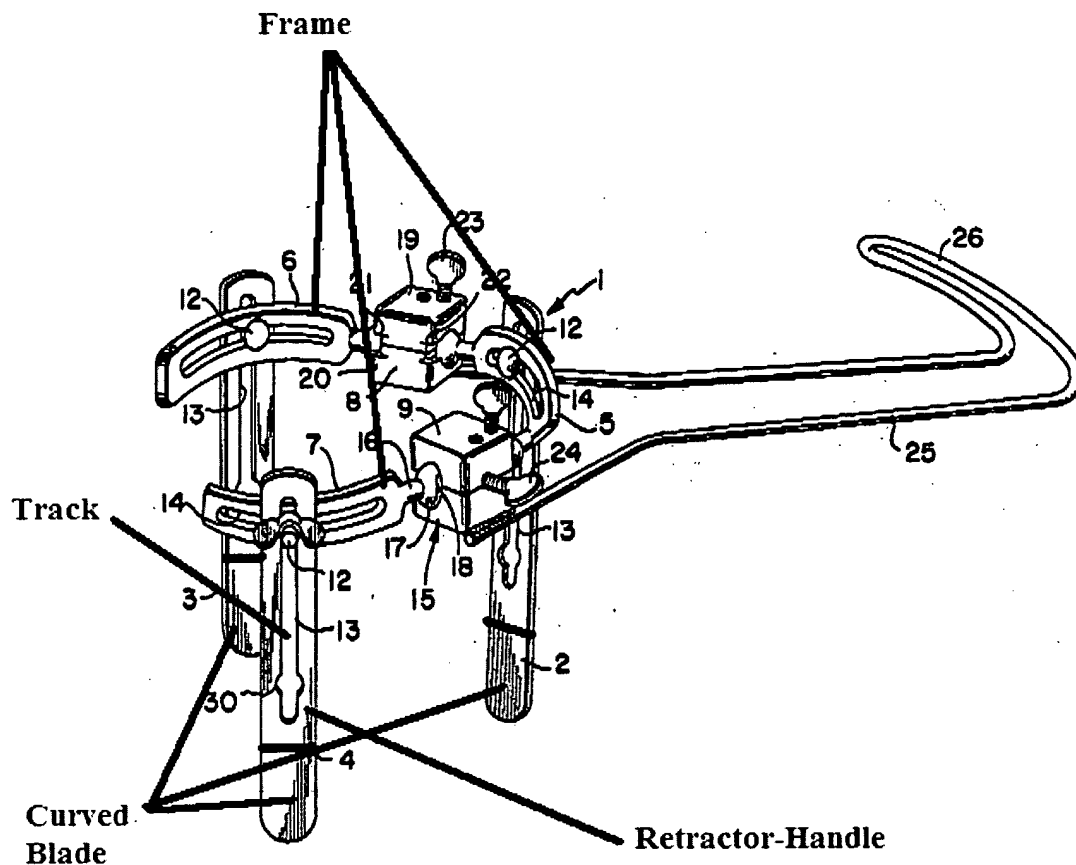


Figure 2

Claims 1-3, 14, 16, 18, 31, 33, 34, 37, 41,42 and 43 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by Van Meter (U.S. Patent No. 497,064).

Van Meter discloses a retraction device (Figure 1) comprising a frame (B) hinged on a handle (b), where the frame includes a track and a least one or more anterior retractors with a curved blade (E), attached to the retractor-handle (D) that is attached to the frame with a jig (g), where the retractor (E) is slidably mounted on the track (B) by a jig that does not contact the patient; a ratchet mechanism (d); and a retractor-handle (D) that is attached to a curved blade (E) with a hinge, since F and D can be hingedly rotated because of how they are connected.

Van Meter discloses a method of retracting vaginal walls of a patient with retractors (E) mounted on a frame (B) where the frame maintains a separation of the retractors and the vaginal walls, where the retraction device is further provided with a handle (b) for mounting the frame in a desired position, and where the retraction device further provides a means (D') to mount the retractors on the frame (see lines 67-86).

Claims 1, 11, 12, 14, 16, 18, 23, 24, 27, 31 and 33 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by McCready et al. (U.S. Patent No. 4,254,763).

McCready et al. discloses a retraction device comprising a frame (18) hinged (41) on a handle (48), where the frame includes a track (50) and a least one or more anterior retractors with a curved blade (74), attached to the retractor-handle (75) that is attached to the frame with a jig (79), where the retractor is slidably mounted on the track



by a jig that does not contact the patient; a ratchet mechanism (76); and a support element (28) that is a flat sheet attached to the handle with a bracket for retaining the device in a position. It is understood that the frame also serves as the track for the retractors to slide along.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Meter (U.S. Patent No. 497,064)

Van Meter discloses the invention claimed except for a ball-type hinge joint. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Van Meter with the hinge joint being a ball-type hinge instead of any other type hinge joint as such would merely constitute substitution of functionally equivalent hinge structures.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MJA



EDUARDO C. ROBERT  
PRIMARY EXAMINER